

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08/04/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR

and

The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

REVIEW APPLICATION No.68 OF 2001

W.P. Nos.4573 and 4774 OF 2003

AND

C.M.P. Nos.21913 and 13438 of 2001

W.P.M.P. Nos.5796, 5797, 6054 and 6055 of 2003

REVIEW APPLICATION No.68 OF 2001:

The Madras Port Trust

represented by its Chairman

Chennai 600 001 Petitioner

-Vs-

1. V. Ramalingam

2. K. Ramamoorthy

3. G. Ravichandran

4. S. Sathyanarayanan

N. Muthu (Died)

5. Union of India, represented

by its Secretary, Ministry

of Surface Transport

New Delhi Respondents

W.P. NoS.4573 AND 4774 OF 2003

A. Manoharan

Assistant Executive Engineer

Chennai Port Trust :: Petitioner in

Chennai W.P. No.4573/03

The Chennai Port Trust Petitioner in

:versus:

1. Union of India
rep. by its Secretary to Government
Ministry of Shipping
Parivahan Bhavan
No.1, Parliament Street
New Delhi-1

2. Under Secretary to Government of
India, Ministry of Shipping
Parivahan Bhavan
No.1 Parliament Street
New Delhi 1

3. Chennai Port Trust Diploma
Engineers' Association, rep. by its
General Secretary, Engineering
Department, Chennai Port Trust :: Respondents
Chennai 600 001 in both the Wps

Review Application under Order 43 Rule 1 CPC read with
Sec.114 of CPC against the judgment and order
dated 26-6-2001 made in W.A. No.1251 of 2000

!For Petitioner in :: Mr. R.G. Rajan
Review Application

^For respondents 1 to 4 :: Mr. S. Krishnasamy
in the review application

For Petitioner in the
writ petitions :: Mr. Vijay Narayan
For Respondents in the Mr. S.M. Deenadayalan
writ petitions :: Mr. A. Kalaiselvan
A.C.G.S.C. for R1 & R2

:ORDER

V.S. SIRPURKAR, J.

This judgment will dispose of Review Application No.68 of 2001 in W.A. No.1251 of 2000, which emanated from W.P. No.11938 of 1993. The judgment will also cover C.M.P. No.13438 of 2001, which is an application for grant of leave to file a re petition in Review Application SR No.54979 of 2001 against the same aforementioned Division Bench judgment in W.A. No.1251 of 2001. Since the subject is common this judgment will also dispose of W.P. Nos.4573 and 4774 of 2003. Few facts will be necessary for understanding the controversy involved.

2. A writ petition came to be filed being W.P. No.11938 of 1993 by the present respondents 1 to 4 and one Muthu, who were employed in the Madras Port Trust, petitioner herein. They all are the engineers, having the qualification of diploma engineer. Initially the petition was for a relief of a Mandamus or a Direction to the Madras Port Trust to carry out the necessary amendments to the regulations framed and thereby providing the promotion opportunities to the Diploma-Engineers to the post of Executive Engineer in the ratio of 4:1, i.e. as against four posts of Executive Engineer to graduate-engineers, one post to diploma-engineer was sought. This was obviously on the basis of the earlier communications made by the Central Government, bearing Ref. No.C-13019/24/87-PE-II, dated 8-6-1991.

3. It was pointed out that as per this communication, the Madras Port Trust had also constituted a Committee, which also recommended by its recommendation dated 30-6-1992 that the diploma-holders should be made eligible to be promoted to the post of Executive Engineer. During the pendency of this petition, however, the Union of India sent a second communication dated 29-6-1994 and by that it was provided that a common seniority list should be maintained for diploma-holders and degree-holders once the two streams merge i.e. once the diploma-holders and degree-holders come on the common platform occupying the same post. By that communication, the Chairman was requested to

take action immediately. This letter was in supersession of an earlier letter Ref.C-13019/3092-PE-II, dated 6-6-1994 and in partial modification of letter Ref.C-13019/20/94-PE-II dated 8-6-1991.

4. The petitioners, therefore, amended their prayer and sought for issue of a Mandamus, directing the respondents to carry out the necessary amendments in the manner of appointment to the post of Executive Engineers, enabling the diploma-holders to be promoted to the post of Executive Engineer as also for further promotions on the basis of common seniority in the post of Assistant Engineer. This amendment application, however, remained without being ordered upon. The learned single Judge, however, realising that the subject of common seniority list was introduced by way of amendment, took the view that since the Union of India had already considered that the diploma-holders could be promoted to the post of Executive Engineer, the unamended prayer, i.e. for a direction to amend the regulations was already granted. However, in so far as the other prayer for promotion was concerned, the learned single Judge observed that the petitioners should make an administrative representation to the Port Trust and that is how the petitioner was disposed of.

5. The petitioners thereafter waited for long time but found that the matters were not moving at all in the matters of their promotions. They filed a writ appeal taking up the position as if their writ petition was dismissed, which was not the position because the learned single Judge had only declared the writ petition to be infructuous on the ground that decision was already taken by the respondent Government making them eligible to the promotion to the post of Executive Engineer. When the matter came for final hearing, a specific stand was taken by the learned counsel appearing for the Port Trust that the Committee constituted by the Port Trust had undoubtedly recommended that even the diploma-holding engineers could be promoted to the post of Executive Engineer. He also referred to the Madras Port Trust's Committee report, dated 30-6-1992, which expressed that since the Board Regulations had not been amended, it was not possible for the Board to implement the decision of the learned single Judge and to give promotions in the ratio of 4:1.

6. Learned senior counsel for the Union of India took the stand during the arguments that it was not necessary for the Government to issue any approval for amending the Board regulations which had otherwise provided that the post of Executive Engineer could be filled in only by the degree-holding engineers. A further clear stand was taken by the learned standing counsel for the Central Government that the promotions could be granted to the Assistant Engineers who were only diploma-holders because that was the clear stand of the Central Government. It was clarified by him that initially the stand of the Central Government was such promotions could be granted in the ratio of 4:1 as compared to the graduate-engineers but, thereafter, the Central Government had taken a further stand that there would be no question of any proportion between the graduate-engineers and the diploma-engineers once they reach a common platform of the post of Assistant Engineer. He took further stand that the Central Government had modified the stand by providing that there shall be a common seniority list of Assistant Engineers both graduate-engineers as well as the diploma-engineers and the further promotions would be on the basis of that common seniority list. It was also pointed out that the Central Government had the authority to issue such directions to the Port Trust and, therefore, the Central Government took the stand that it was up to the Port Trust to implement the decision and in fact implemented the same as per the guidelines provided by the Central Government much earlier.

7. It was, therefore, held by the Division Bench, to which one of us (V.S. Sirpurkar, J.) was a party, that once this stand of the Central Government was clear so as to enable the diploma-holding engineers to be promoted to the post of Executive Engineer, there was no question of any further contest. The writ petition was, therefore, allowed and the directions were given to the respondents to promote the petitioners, in keeping with the

rules. The directions were also given fixing the deemed date of the retired employees like Ramalingam, Ramamurthy and Muthu. This judgment is now sought to be reviewed by the Madras Port Trust.

8. In the present application, it is pleaded by the Madras

Port Trust that there were regulations framed under Sec.28 of the Madras Port Trust and under Regulation 5 of the Regulations, the power vested with the Chairman in the matter of ap s also to provide for the suitability of the age limit, educational and other qualifications, etc. The Board regulations specifically provide that for being promoted to the post of Executive Engineer a degree in engineering, from a recognised University , is a must. It is then pointed out that these regulations were statutory in character and the infraction of the same would vitiate any action taken. It was then pleaded that the circular dated 28-1-1994 was sought to be clarified, by the letter dated 12-10-1994, on which the Government has not taken any action.

9. In short, it was pleaded that in the absence of any amendment to the regulations, which provided for the minimum qualification of engineering degree for promotion to the post of Executive Engineer, nothing was possible.

10. The amendment noted by the Division Bench is attacked on the ground that by that amendment, a new cause of action arose and the writ petitioners in that event had to implead the degree-holders or part-time degree-holders as necessary pa is further pleaded that right from 1993, promotions were made on the basis of the unamended regulations and they would have to be disturbed and if that was so, those promotees were also the necessary parties.

11. Along with this review application, as many as about ten petitioners filed a review application and since they were not parties to the earlier writ petition, they sought to move a petition (C.M.P. No.13438 of 2001) for leave to file the lication against the judgment, to which they were not the parties. On the whole, their contention is that they were the necessary parties in the writ appeal as their rights were in jeopardy.

12. When the matters came up for hearing, after notice to the original writ-petitioners/respondents herein, Shri V.T. Gopalan, learned senior counsel very heavily relied on the circular bearing No.C-13019/11/96-PE-II, dated 8-3-2000 and poi at this letter dated 8-3-2000 was not kept before the Division Bench by either the learned counsel appearing for the Madras Port Trust or even by the learned standing counsel appearing for the Central Government. Learned counsel pointed out that by this letter, the earlier letters of the Ministry bearing Ref.No.C-13019/24/87-II dated 8-6-1991, C-13019/20/94-PE-II dated 28-6-1994 and C-13019/20/94-PE-II dated 11-10-1994 were kept in abeyance since the issue relating to cadre restructuring of diploma/deg ree engineers of Major Ports was under consideration in consultation with the Ministry of Finance. According to him, if the necessary result would be that the original regulations would govern the issue and as such the diploma-holders would not be able to be promoted to the post of Executive Engineers.

13. When we see the grounds for review in the review application, this letter is not even distantly referred to therein. All that stated was that unless the regulations were amended, the petitioners could not be held qualified to be promot post of Executive Engineer. Ordinarily, this

letter would have clinched the issue though the question still remains as to whether a letter, which was not at all shown or pointed out to the Division Bench could be made a basis for a prayer of a review. Learned senior counsel very candidly admitted that the letter ordinarily should have been pointed out to the Division Bench but was not so pointed out. This letter, undoubtedly, would have mattered because all the three earlier-mentioned letters which had held the even the diploma-engineers to be qualified to be promoted to the post of Executive Engineers were obviously set at naught by this letter. It is significant to note that in all these three letters, which are in the nature of guidelines, the Central Government had consistently taken a stand that firstly the diploma-engineers holding the post of Assistant Engineers could be promoted to the post of Executive Engineers; secondly, initially it had taken a stand that the ratio between the degree-engineers and diploma-engineers would be 4:1; lastly, it took the stand that there would be no necessity of any ratio and once these engineers came on the common platform of the post of Assistant Executive Engineer then there will be a common seniority among themselves. If by letter dated 8-3-2000 all these three letters were kept in abeyance then obviously the regulations would rule the roost, according to which, the promotion was available only to the degree-holding engineers.

14. Shri Thiagarajan, learned senior counsel appearing on behalf of the respondents herein produced one more letter of the Central Government dated 24-12-2002. This letter makes a reference to the earlier letters dated 8-6-1991, 6-6-1994, and 11-10-1994. So also, the earlier controversy regarding the degree-engineers and diploma-engineers has been referred to. A specific summary of these letters has been drawn in five clauses. They being:
firstly, the diploma-holders could be promoted up to the level of Executive Engineers;
secondly, there could be a limited allocation of posts for diploma-holders in the ratio of 4:1 or 5:1 in relation to graduate-engineers; thirdly, Class III posts in the Engineer cadre were to be redesignated without any change in their duties and without any financial implications;
fourthly, common seniority list was to be maintained for degree and diploma engineers once the two streams merge for promotion to the higher cadres; and
lastly, regarding the ratio of 4:1 or 5:1 between degree-engineers and diploma-engineers whenever the two streams merge, no ratio system would exist meaning thereby, that after the merger, i.e. after the two category of engineers come on the same platform, the promotion has to be made on the basis of common seniority list.

After this, the following paragraph appears in that letter, which reads as follows:

□These guidelines were in vogue till 2000 when these instructions were kept in abeyance by letter No.C-13019/11/96/PE-I dated 8-3-2000 on the ground that cadre restructuring of degree/diploma holders was under consideration. Cadre restructuring proposal, involving upgradation of some posts and financial implications, could not be finalised as it needs consultation / concurrence of Ministry of Finance. Thus as on date there are no clear instructions on the subject of promotional avenue to the diploma holders. Decision on cadre restructuring will be implemented with all its consequences. However, in the mean time we need to provide guidelines as promotion of diploma / degree

holders, if due, should not wait till the cadre restructuring is finalised. In the circumstances, it has been decided to withdraw this Ministry's letter No.C-13019/11/96/PE-II dated 08.03.2000 and restore the position available before 08.03.2000. The ports are accordingly requested to take necessary action in the matter. (emphasis ours)

Once this letter was produced, learned senior counsel appearing on behalf of the Port Trust sought time to check the factual position and ultimately conceded that the said letter was there and in view of the said letter, once the letter dated 8-3-2000, was withdrawn, there will be no question of reviewing the judgment. Learned counsel took the stand that these guidelines issued in the latest letter as also the earlier letter would be binding on the Port Trust come what may (in spite of the regulations to the contrary). Learned counsel, therefore, did not press the other submissions in the review application. In view of that, the review application is dismissed as also the other connected applications are closed.

15. However, the matter did not stop there. Shri Vijay Narayan, learned counsel appearing on behalf of the ten graduate-engineers pressed his application for review and for that purpose sought the permission of the Court. Since the degree were not the parties to the writ petition or the writ appeal, the review application by these persons for the first time cannot be entertained. It has not been shown as to in what manner would the ten petitioners individually be affected. The review application is silent about the same. We are, therefore, not in a position to permit the review. C.M.P. No.13438 of 2001 for leave to file review application is dismissed. Consequently Review Application SR No.54979 of 2001 cannot be entertained. It is rejected.

16. The matters do not stop even there. Realising the technical difficulty regarding the tenability of the review application filed by the petitioners, who were not even the parties to the original writ petition and the writ appeal, two writs (W.P. Nos.4573 by one Manoharan, Assistant Executive Engineer, who had sought leave to file the review application vide C.M.P. No.13438 of 2001 and 4774 of 2003 by the Chennai Port Trust Degree Engineers' Association) came to be filed. Both the writ petitions came to be placed before us. Since we were already dealing with the subject of the promotions to the diploma-engineers and the degree-engineers, we heard Shri Vijay Narayan at length.

17. The contention raised in this writ petition is that the order in the nature of guidelines issued by the Central Government, bearing No.C-13019/11/96/PE-II dated 24-12-2002 is firstly beyond the powers of the Central Government and contrary. In so far as the first contention is concerned, the petitioner referred to the regulations of the Madras Port Trust and the proceedings dated 4-12-1979 issued by the Chairman in which it was provided that the post of Executive Engineer shall be available only to the degree-holders.

18. The petition then referred to the representations made by the diploma-holders and referred to the communication dated 8-6-1991 passed by

the Central Government. We have already made a reference in the earlier part of this judgment to the action and, therefore, we need not repeat the same. However, it is sufficient to state that, finding that there were varying situations in the Ports, this communication was in the nature of the guidelines and therein, it is specifically pointed out that the diploma-holders could be promoted up to the level of Executive Engineers. The ratio of 4:1 or 5:1 was also accepted therein. The writ petitioners then referred to the formation of a sub-committee by the Chairman of the Port Trust and its unfruitful discussions with the degree-holding engineers' association and the diploma-holding engineers' association and further to the fact of reference having been made to the Indian Ports Association for solving this issue between the diploma-engineers and the degree-engineers.

19. A reference is also made to the modification dated 6-6-1994 to the earlier guidelines for directing therein to maintain a common seniority list. It is further stated that by letter dated 28-6-1994 also a common seniority list was directed to be maintained for diploma-engineers and degree-engineers, once the two streams merge. The petitioners have even made a reference to the letter dated 1-10-1994 and then proceeded to point out that on 15-5-1995 a letter was written by the Government of India to the Managing Director of Indian Ports Association, in which it was suggested that the issue regarding their cadre restructuring of degree/diploma holding engineers was pending for a long time and the position was varying from port to port, leading to unnecessary complications and lot of dissatisfaction amongst the staff and, therefore, the Government had decided to refer the issue and for filing a consolidated report to the Ministry after that issue was resolved.

20. According to the petitioners, this issue was referred to a committee and the suitable actions were to be taken on the basis of this report. A reference is then made to a draft report of degree-engineers and diploma-engineers at major point is pointed out that five cadres were to be prepared wherein the diploma-holders were to be directly inducted to the post of Junior Engineers Grade-II in Class III cadre and had the further promotional avenues to the posts of Assistant Engineer Class II, Assistant Executive Engineer Class I and Executive Engineer Class I. It is further pointed out that in this report the positions higher to the Executive Engineer were to be filled up only by degree-holding engineers. It is then pointed out that Government of India had not taken any decision in pursuance of this draft report but, issued a letter on 8-3-2000 stating that the letters dated 8-6-1991, 28-6-1994 and 11-10-1994 should be kept in abeyance.

21. A reference in paragraph 14 is thereafter made to a Parliamentary Committee on subordinate legislation which suggested that instead of leaving the issue to the Chairman of the Port Trust, it would be better if the guidelines are provided by adding a schedule so as to make it self-contained. It is then pointed out that the recommendations of the Parliamentary Committee were accepted by the Government and the Ministry of Surface Transport directed the Madras Port Trust to amend the regulations suitably on the lines of the recommendations of the Parliamentary Committee. The Madras Port Trust, in its meeting held on 30-5-1989, approved all the amendments proposed to the said regulations subject to the sanction of the

Central Government and on 4-8-2000, the Government decided to amend the regulations and the Regulation No.5 stood amended whereby it was provided that the qualifications to the department posts shall be as per the schedule which prescribed that for the promotion to the post of Executive Engineer, a degree in Civil Engineering was a must.

22. The petitioners then referred to the writ petition filed by the diploma-holders and the writ appeal. They also referred to the review petitions and then pointed out that in the mean time, the letter dated 24-12-2002 has been issued. The letter dated 24-12-2002 is assailed on various grounds as we have already made clear.

23. The first ground of objection raised by Mr. Vijay Narayan was that the Central Government did not have any power to issue this letter more particularly under Sec.125 of the Major Port Trusts Act. Learned counsel says that the letter has the proper format under Art.71 of the Constitution. In short, the contention is that the letter dated 24-12-2002 is not in accordance with the Act and more particularly in accordance with Sec.125. It will be, therefore, necessary to see as to whether the Central Government had the necessary powers to issue the said letter.

24. Before we approach the problem it has to be stated that this letter is issued by the Government of India, Ministry of Shipping and is in the nature of the guidelines, which is clear from the beginning words of paragraph 2. Seeing that it cannot be disputed that all through, the Central Government has been issuing the guidelines and they were more particularly issued in the letters dated 8-6-1991, 6-6-1994 and 28-6-1994. In the impugned letter also, the guidelines expressed in the aforementioned earlier three letters, making the post of Executive Engineer available to the diploma-holding engineers, is reiterated. It will be seen that all through, right from the beginning of 1990, there has been a consistent stand that the diploma-holding engineers could be appointed to the post of Executive Engineers. This consistent policy, which started from 1991 and was ruling the roost up to 2000, was suddenly kept in abeyance because of the letter dated 8-3-2000. All that the present letter does is to remove the eclipse on the earlier policy and to rejuvenate the same.

25. It cannot be disputed that the letter has to be treated as a guideline because the letter itself purports to be one. Even the Central Government has not taken any exception to this letter during the debate on the review application and the same. To say that the said policy cannot be informed by the letter signed by the Under Secretary would, therefore, be a travesty. This is merely a guideline issued by the Central Government and the letter has been written by the Under Secretary only informing of the guidelines and the decisions taken. The exception taken to the form of the letter is, therefore, clearly baseless.

26. The second argument was that the Central Government had approved the regulations of the Board framed under Sec.28 of the Major Port Trusts Act, 1963 and granted its approval under Sec.124 of the said Act. The

learned counsel was at pai out the regulations of the Madras Port Trust and the amendments made thereto, which was approved by the Central Government on 4-8-2000. There could be no dispute that under the amended regulations, a degree in Civil Engineering would be a must for hold ing the post of Executive Engineer. The amendments have been approved by the notification and it is pointed out that the regulation would come into force on the date of publication, which is on 4-8-2000. Very heavily relying on these regulations, Shri Vijay Narayan says that in the wake of these regulations and more particularly in the wake of the approval granted on 4-8-2000, the Central Government cannot now go back and set at naught the amendments by rejuvenating the earlier guidelines, which enabl ed even the diploma-holding engineers to be promoted as Executive Engineers. Learned counsel in order to support his argument points out that these are the regulations framed under Sec.28 of the Major Port Trusts Act and duly approved by the Central Gov ernment under Sec.124 of the said Act. Learned counsel points out Sec.125 and submits that the Central Government had the necessary powers under subsection (1) thereof to frame the regulations or to amend the regulations. Learned counsel further submit s that the matters of appointment, promotion, suspension, etc. of the employees of the Port Trust come within the purview of Sec.28(a) of the Act.

27. In short, the contention is that these regulations which are presently in vogue could be amended or directed to be amended under a specific procedure laid down by Sec.125 and in no other manner.

28. He points out that even the Madras Port Trust was liable to be given an opportunity to raise an objection or suggestion before any amendment is directed to be made by the Central Government. Learned counsel is at pains to point out tha , in fact, no such direction to amend the regulations and the regulations were binding on the Port Trust particularly because the amendment to the regulations were kept before the Parliament and it was only after the Parliament passed the same, the said regulation came to be amended. Learned counsel, therefore, raised the further question as to whether the Central Government had the power to give directions contrary to these regulations even when amendment of the regulations were approved by the Parlia ment as early as in 2000.

29. When we consider the arguments from the angle of Sec.125 of the Major Port Trusts Act, the argument is completely incorrect. What is being done by the Central Government is not an exercise under Sec.125. The Parliament is not seeking regulations amended; nor is there any direction issued by the impugned communication to frame the regulations. Therefore, we are not here to test as to what would be the implication of Sec.125 of the said Act. Even reading plainly that section, it is o bvious that even there, the Central Government has an absolute right in respect of the regulations. It can direct the Port Trust to frame the regulations. It can also direct the amendments. The only rider being of giving an opportunity to the respecti ve Board to raise objections, etc. Therefore, even independently looking at Sec.124 of the said Act, it is clear that the Central Government has the absolute power in respect of the regulations.

30. However, the further question is as to whether the Central Government's guidelines and directions could be contrary to or superseding the regulations framed. The first argument of the learned counsel was that these regulations were placed before Parliament and it is only after the Parliament granted its approval, that they were framed and, therefore, the Central Government by itself would not be in a position to in any way influence these regulations.

31. In short, the argument was that the Government did not have power to do anything contrary to these regulations and, therefore, the impugned communication was ultra vires the powers of the Central Government. The argument must necessarily

32. The argument must necessarily fail. In the first place, it cannot be forgotten that the regulations are restricted only to the Madras Port Trust. They were originally framed under the Major Port Trust Act and more particularly under S of. Though the regulations originally framed for the Madras Port Trust are saved under Sec.133(2D)(c) of the Major Port Trusts Act, the fact remains that they would apply only to Madras Port Trust. When we see the other provisions, it is obvious that the Central Government has a plenary power over all the Major Port Trusts, they being Port Trusts of Bombay, Calcutta and Madras in respect of which there were separate enactments earlier, which separate enactments stood repealed by the present Act. Under the provisions of Sec.106, the Board has to submit to the Central Government a detailed report of the administration of the port during the preceding year. Sec.107 ordains every Board to submit the statements of its income and expenditure every year. Under Sec.108, the Central Government has a power to order a local survey or examination of any works of the Board or the intended site of such port. The expenditure of which has to be borne by the Board. Under Sec.109, the Central Government has the power to restore or complete the work at the cost of the Board. Sec.110 gives the ultimate power to the Central Government even to supersede the Board. Following procedure prescribed therein. Sec.110 gives a complete control to the Central Government as the Board could be superseded when it is unable to perform the duties imposed by or under the provisions of the Act. Subsection (b) provides that if the Board has persistently made default of the duties imposed upon it by or under the provisions of this Act or if its financial position has deteriorated, the Board can be superseded by the Central Government. Before superseding, however, the Board has to be given a show cause notice. Under Sec.110(3)(b) and (c), the Central Government has the power to reconstitute the Board by fresh appointment and fresh elections. Lastly, under Sec.111, the Central Government has a power to issue directions to the Board. The section reads as follows:

Power of Central Government to issue directions to Board: (1) Without prejudice to the foregoing provisions of this Chapter, every Board shall, in the discharge of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Board shall be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

If this is the position of the Central Government vis-a-vis a particular Board and in our case, the Board of Trustees of Port of Madras then, it would be a travesty to say that the regulations framed under Sec.28 for that particular Board would bind the Central Government and the Central Government would not be in a position to issue any guidelines.

33. The learned counsel was at pains to point out that a conjoint reading of Sec.124 and Sec.125 suggests that the regulations come into existence only after they have been approved by the Central Government and published in the official gazette. The learned counsel further submits that where these regulations have to be amended, there is a specific modality provided by Sec.125, which modality has not been adhered to in the present case for amending the regulations and more particularly regulation No.5. That may be so. However, there can be no escape from the proposition that the Central Government has the absolute control over the Boards and the Central Government could issue directions which are binding on every Board. The language is mandatory that every Board shall be bound by the directions on the question of policy. Even where it is doubtful whether a particular direction is one of policy or not, the decision of the Central Government has been made final.

34. In short, there is a complete control of the Central Government in so far as the powers of various Port Trusts are concerned. If the argument were to be accepted then, it will have to be held that Secs.124 and 125 control Sec.111 which is the case because, Secs.124 and 125 pertain to the regulations in respect of the particular Board while Sec.111 speaks about the general power of the Central Government vis-a-vis all the Ports and the Boards thereof. The argument is, therefore, clearly incorrect.

35. It cannot be faulted that the letters, which we have referred to above, were issued by the Central Government from time to time pertained to a policy. It is liable to be seen in this behalf that the question regarding the rights of the sailing engineers vis-a-vis degree-holding engineers was pending before the Central Government for considerable time right from the beginning of the last decade of the year 2000 and even the language of those letters suggests that the guidelines were issued by the Central Government which guidelines tended to be favourable to the diploma-holding engineers by way of a policy. The Central Government also had noted in one of the letters that the situation was different from port to port. If, therefore, the Central Government had issued the guidelines, bringing the employees working in all the Ports on par, it was certainly a matter of policy only, which policy under Sec.111, was binding against the Port Trust. Therefore, the argument cannot be countenanced that the regulations of a particular Board, in this case, the Madras Port Trust, was over and above the guidelines. In this backdrop, when we consider the last letter, that is also a clear manifestation of the policy of the Central Government, though that policy is of a temporary nature.

36. The most interesting factor to be noted is that the Board has no problem with this policy because the learned counsel for the Port Trust had no objection whatsoever to accept and to show the readiness of the Board to comply with the said the last letter dated 24-12-2002. Interestingly

enough, it is being challenged by a few employees of the Port Trust for whom, probably, the said policy was not a welcome one. Under these circumstances, the writ petitions of these employees or their association cannot be entertained. The writ petitions have no merits. They must be directed to be dismissed. They are accordingly dismissed. No costs. Connected W.P.M.Ps and C.M.Ps are closed.

Index:Yes

Website:Yes

Jai

TO:

1. Secretary to Government
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2. Under Secretary to Government of India,
Ministry of Shipping
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No.1 Parliament Street
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